IN THE HIGH COURT OF JUDICATURE AT BOMBAY

INSOLVENCY JURISDICTION

NOTICE OF MOTION NO. 34 OF 2006

IN

NOTICE NO. N/207 OF 2005

Re: D V Sathe.

... Judgment Debtor.

Ex-parte :

Hasmukh S. Panchmatia. .. Judgment Creditor.

Mr. P.C. Kansara for Judgment debtor.

Mr. H.V. Chande for Judgment Creditor.

CORAM : S.U. KAMDAR, J.

DATE : 2nd May, 2006.

P.C.:

. The present notice of motion is taken out for setting aside the insolvency notice No. 207 of 2005 dated 3.12.2005. The said insolvency notice has been initiated on the basis of a decree passed in Summary Suit No. 1868 of 2002. It is the case of the judgment debtor that he was sued in that suit as a partner and though the firm was sued there was no decree passed against the firm. It is his

further case that the decree against the partner alone cannot be executed by the judgment creditor in absence of a decree against the partnership firm. It is further submitted that against the said decree he has preferred an appeal and obtained interim stay of the decree on the condition of depositing certain amount. He however submits that the stay has been vacated because he failed to deposit the amount as directed as of today. He submits that the decree could not have been passed as against the judgment debtor because he is not a partner of the said firm. In my opinion, once there is a decree against the judgment debtor and it is enforceable decree because the stay order obtained stood vacated by virtue of non-deposit of amount as directed then the said decree has to be accepted and enforced. In the present insolvency proceedings it is not open for me to go behind the decree to adjudicate whether the decree is rightly passed or not as against the judgment debtor.

2. The second contention raised by the learned counsel for the judgement debtor is that the claim is settled between the plaintiff and the defendant no. 10 in that suit by filing consent terms. However, the learned counsel for the judgment creditor points out that the decree as against the judgment debtor is only passed after giving credit to the amount received by the judgment creditor from

the defendant no. 10 under the said consent terms. In view thereof, the contention that in view of the consent decree the present proceedings cannot lie also has no merit and is required to be rejected. In view of the aforesaid position, there is no merit in either of the submissions advanced by the learned counsel for the judgment debtor. Motion is dismissed. Insolvency notice is made absolute. No order as to costs.

3. The learned counsel appearing for the judgment debtor applies for stay of this order. Stay is granted for six weeks from today.